



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 8, 1996

Mr. William Monroe Kerr  
Kerr & Nunley  
Attorneys at Law  
P.O. Box 511  
Midland, Texas 79702

OR96-0301

Dear Mr. Kerr:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38652.

The Ward County Irrigation District No. 1 (the "district") received a request for "a copy of the audit report conducted during the month of December and recently submitted to you by the 143rd District Attorney." The audit, conducted at the direction of the district attorney, took place during the first week of December, and the resulting report covers the time period from January 1, 1989 to October 3, 1995. Upon completing the report, the special auditor delivered the original to the district attorney. The district attorney then forwarded a copy of the report to the district. You submitted a copy of the report to this office for our review, and you contend that the report is excepted from required public disclosure by section 552.103 of the Government Code.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

We agree that the district reasonably anticipates litigation and that the audit report is related to the anticipated litigation. The district has therefore met its burden under section 552.103. However, once information has been obtained by all parties to the litigation, through discovery or otherwise, a section 552.103 interest no longer exists with

respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing party in the litigation has seen or had access to the information at issue, there is no justification for withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Here, all parties to the anticipated litigation have access to the audit report. The district attorney for Ward County has the original copy of the report, and the district has its own copy of the report. Therefore, a section 552.103 interest no longer exists with respect to the audit report. Consequently, the district must release the audit report to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref.: ID# 38652

Enclosures: Submitted documents

cc: Ms. Mari Maldonado  
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(w/o enclosures)